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CHARLES ELMORE

In the Supreme Court
OF THE
United States

OCTOBER TERM, [redacted] 1928

No. [redacted] 86

CARLEY & HAMILTON, INC., et al.,
Appellants,

vs.

FRANK G. SNOOK, as Chief of Division of Motor Vehicles,
Appellee.

STATEMENT AND PETITION TO ADVANCE.

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J. F. VIZZARD,
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Solicitors for Appellants.

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Appellants,

vs.

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Appellee.

STATEMENT AND PETITION TO ADVANCE.

Come now the appellants in the above entitled cause and file their statement required by Rule 12 of the Supreme Court and petition that this cause be advanced for an early hearing.

(a) The appeal herein is based upon the provisions of Paragraph 3 of Section 238 of the Judicial Code, as amended by the Act of February 13th, 1925, C. 229, 43 Stat. 936.

(b) On February 13th, 1929, the lower Court consisting of three judges, one of whom is a circuit judge, entered an order or final decree dissolving a preliminary injunction theretofore granted, and dismissed the bill of complaint for want of equity, and the plaintiffs, now appellants, are required to pay the defendant's costs to be taxed (Record, p. 27). On February 25th, 1929, the plaintiffs presented to said Statutory Court a motion to file a proposed amended bill of complaint which was attached to said motion (Record, pp. 28 to 43 inclusive) and a proper notice of motion was served on the defendant (Record, p. 44). Thereafter said Statutory Court entered an order or decree on March 25th, 1929, refusing the motion to file said amended bill of complaint (Record, p. 45). On April 15th, 1929, the plaintiffs prayed for an appeal from the said order and decree of February 13th, 1929, and also from the said order and decree of March 25th, 1929. Said appeal was granted by the said Statutory Court (Record, p. 48).

(c) The bill of complaint shows: The plaintiffs instituted the action as a class suit (Record, p. 2). The plaintiffs must use their vehicles in order to carry on their business, and said vehicles operate exclusively within the limits of the cities and do not use any public highway outside of said streets of said cities (Record, p. 3). The defendant is the State Officer who enforces the provisions of the California Vehicle Act (Record, p. 3). The "California Vehicle Act," being Chapter 226, Statutes of 1923, has been amended by Chapter 240, Statutes of 1925, and by Chapters 752, 844 and 864, Statutes of 1927. The provisions of said

Act, as amended, compel all owners and operators of vehicles to obtain a license before they can use any public highway, and in addition subdivisions (b) and (c) of Section 77 of said Act, as amended, must pay licenses depending upon the weight of their vehicles, and unless they pay the same, said owners and operators are subjected to heavy fines and imprisonment and their vehicles can be confiscated; counties and incorporated cities have powers not only to license but also to regulate the operation of vehicles. The defendant shall deposit the collection in the State Treasury. Not more than 25% of the moneys collected can be used for regulation, the balance is used for the repair and maintenance of the public highways outside of the limits of incorporated cities, and counties can, if they desire, use some of their share for the maintenance and repair of the designated streets and incorporated cities (Record, pp. 3, 4, 5). The Supreme Court of California has interpreted the said subdivisions (b) and (c) of said Section 77 of said Act and declared that the sole purpose was to exact license fees on motor vehicles using the public highway and to raise funds with which said public highways may be improved and kept in repair, and the money so raised was collected as a charge for the use of said public highways by motor vehicles transporting passengers for hire or property. The plaintiffs allege the said license taxes or fees under said subdivisions (b) and (c) aforesaid are charges for the use of public highways by motor vehicles, to-wit, "tolls" (Record, pp. 5, 6). The plaintiffs allege the incorporated cities have enacted ordinances exacting charges upon all motor vehicles trans-

porting passengers for hire or property using the streets of said cities and said charges are in addition to the said license taxes or fees under the provisions of said subdivisions (b) and (c). Said municipal ordinances require license fees varying from $5.00 to $42.00 per motor vehicle depending upon the city and said ordinances were enacted for the purpose of obtaining revenue for the cost of regulating said motor vehicles and maintaining and repair of the streets of the said respective cities, and not less than 75% of the moneys collected by said cities is used and will be in the future used to maintain and repair said streets (Record, p. 6). The plaintiffs, as well as all others similarly interested or situated must pay said charges under said subdivisions (b) and (c), as aforesaid, in advance before they can use said motor vehicles on any streets, although they have paid the same character of charges in said cities, unless their businesses are destroyed, or they will be subjected to heavy fines and imprisonment, or both, together with seizure and sale of said motor vehicles. The defendant, solely under color of the office as Chief of Division of Motor Vehicles, threatens to and will enforce said subdivisions (b) and (c), as aforesaid, against the plaintiffs and all persons, firms, associations and corporations similarly interested and situated unless restrained by the order of this Court (Record, pp. 6, 7). The plaintiffs allege said subdivisions (b) and (c) of Section 77 of said Act, as amended, as aforesaid, and the threatened acts of the enforcing of said illegal exactions are void and unconstitutional, being contrary to and in violation of the Constitution of the United States, especially the

Fourteenth Amendment thereof and the Constitution of the State of California, the protection of all of which the plaintiffs and all persons, firms, associations and corporations similarly interested and situated pray (Record, p. 7). There is no plain, adequate and complete remedy at law (Record, p. 7). Matters involved in this controversy exceed in value the sum of three thousand (3000) dollars exclusive of interest and costs (Record, p. 7). Plaintiffs on behalf of themselves, as well as all persons, firms, associations and corporations similarly interested and situated, prayed for an interlocutory injunction restraining the defendant from enforcing the provisions of said subdivisions (b) and (c) of said Section 77 of the "California Vehicle Act" and to call in two additional judges, one of whom to be a circuit judge, for the purpose of hearing and determining said motion, as provided by Section 266 of the Judicial Code, as amended, and upon the final hearing before said Court consisting of three judges, for a decree declaring said subdivisions (b) and (c) are void and unconstitutional, and the defendant be forever enjoined from enforcing said illegal, void and unconstitutional subdivisions, and for all and other, proper and further relief (Record, p. 8).

Motion and affidavit to call in two additional judges, one of whom to be a circuit judge (Record, pp. 10, 11).

Order granted on motion setting hearing before three judges, one of whom was a circuit judge (Record, pp. 13, 14).

Proper notice served on Governor, Attorney General, and defendant (Record, pp. 15, 16).

Motion and affidavit for restraining order (Record pp. 17-20).

Order granting restraining order (Record, p. 21).

Motion of defendant to dismiss the bill of complaint (Record, p. 22).

Memo. Opinion of said Statutory Court composed of two District Judges and one Circuit Judge. The Court held "that the registration fee imposed by the State is a valid exercise of the police power of the State and violates no provisions of the Constitution of the United States," but did not pass upon the questions of "toll" and the provisions of the California Constitution (Record, pp. 23-26).

Order and decree entered by said Statutory Court, dissolving preliminary injunction and the bill of complaint was dismissed for want of equity (Record, p. 27).

Plaintiffs filed a motion for permission to file an amended bill of complaint attached to said motion (Record, pp. 28-43).

Proper service upon the defendant was made (Record, p. 44).

Said Statutory Court entered an order or decree to-wit: "it was ordered that the motion be set aside the decree be and the same is hereby denied" (Record, p. 45).

Plaintiffs filed assignment of error (Record, pp. 46, 47).

Prayer for appeal and granting same by said Statutory Court (Record, p. 48).

Citation signed by Statutory Court, served upon defendant and filed (Record, p. 49).

Appeal bond approved by said Statutory Court and filed (Record, pp. 50, 53).

Praecipe served and filed (Record, pp. 54, 55).

Certificate of Clerk (Record, p. 56).

As is seen by the record the plaintiffs, under the provisions of Section 266 of the Judicial Code, as amended, filed said bill of complaint, and moved for an interlocutory injunction to restrain the defendant, an officer of the State of California, from enforcing said subdivisions (b) and (c) of Section 77 of the "California Vehicle Act," as amended, upon the ground of the unconstitutionality of said subdivisions and have taken all of the proceedings necessary to vest this Honorable Court with sole jurisdiction of an appeal from the said orders or decrees entered by said Statutory Court.

(d) The following cases sustained the jurisdiction:
Buck v. Kuykendall, 267 U. S. 308;
Morris, et al. v. Duby, et al., 274 U. S. 135.

Wherefore the appellants pray this Honorable Court to sustain its jurisdiction, and further to advance this case so as to hear and determine the questions before the appellants are compelled to pay said exactions for the year 1930.

Dated, San Francisco, California,
May 22, 1929.

Respectfully submitted,

W. R. CRAWFORD,
J. F. VIZZARD,
EDWIN C. EWING,
Solicitors for Appellants.